

Co. not involved in R&D activity is incomparable with Co. providing R&D services to AE

Summary – The Bangalore ITAT in a recent case of FMC India (P.) Ltd., (the Assessee) held that where in impugned assessment year, a company did not undertake any research and development activity, in that year it could not be compared to assessee providing research and development services to its AEs

Facts

- The assessee had a research laboratory from where it provided R & D services to its AEs. It carried its business under three segments: processing of pesticides, R & D services and support services. It undertook international transactions in all these segments. Its margin was above the arithmetical margin mean in processing of pesticides and support servicing and therefore, the international transaction in these segments were treated at arm's length.
- The TPO in the light of available data of comparables concluded that the transaction undertaken in the R & D activities was not at arm's length and thereby, proposed an adjustment.
- The DRP directed that working capital adjustment be recomputed resulting into an arm's length margin of 34.04 per cent. Accordingly, it proposed a revised adjustment.
- On appeal:

Held

Alphageo India Ltd.

- This company was taken as good comparable by the assessee itself in the earlier years but from perusal of the records, it is found find that in the impugned assessment year, this company did not undertake any research and development activity. A copy of annual report of this company is available wherein it is mentioned that this company did not undertake any R&D activity. In the instant case, the ALP is determined with respect to R&D services and the said comparable was not engaged in any research and development activity. Thus, in the impugned assessment year, this company cannot be held to be a good comparable. Force is found in the contentions of the assessee and it is held that this comparable be excluded from the list of comparables.

Vimta Labs, Geologging Industries Ltd. and IDC India Ltd.

- The assessee contended that the exclusion of these comparables was examined by the Tribunal in the case of *Apotex Research (P.) Ltd. v. Dy. CIT IT (TP) Appeal No. 1286 (Bang.) of 2010*, dated 22-2-2017 and *FMC India Pvt. Ltd. v. Dy. CIT*, assessee's own case. Since these comparables are not

functionally similar with the assessee's profile, in the light of the said judgment of the Tribunal, these 2 comparables are to be excluded from the list of comparables.

- Since instant court excluded 3 comparables out of 4 comparables, only 1 comparable *i.e.* IDC India Ltd., is left out. In the light of these facts, the matter is sent back to the TPO to make a fresh study to find out the good comparables for determining the ALP in the assessee's case. In the result, the order of the Assessing Officer is set aside and matter is restored to TPO/Assessing Officer to readjudicate the issue afresh after taking more comparables.